

EDMOND ANTHONY PORRATA	§	
VS.	§	CIVIL ACTION NO. 9:15cv103
DIRECTOR, TDCJ-CID	§	

¹ As punishment for this disciplinary conviction, petitioner was *inter alia*, required to eat food loaf for 7 days. He asserts this constituted cruel and unusual punishment. As petitioner being required to eat food loaf implicated the conditions of his confinement rather than the fact or duration of his confinement, his objection to be this requirement may not be asserted in a habeas action. Petitioner's complaint about being required to eat food loaf has been severed into a separate civil rights action.

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED** as the opinion of the court. A final judgment shall be entered in accordance with the recommendation of the Magistrate Judge.

In addition, the court is of the opinion that the petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying federal habeas relief may not proceed unless a judge issues a certificate of appealability. *See* U.S.C. § 2253. The standard that must be met in order to receive a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner is not required to demonstrate that he would prevail on the merits. Rather, he need only demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented in the petition are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. If the petition was dismissed on procedural grounds, the petitioner must show that jurists of reason would find it debatable: (1) whether the petition raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484; *Elizalde*, 362 F.3d at 328.

In this case, the petitioner has not shown that the issues raised by his claims are subject to debate among jurists of reason. The factual and legal questions raised have been consistently resolved adversely to his position and the questions presented are not worthy of encouragement to proceed further. As a result, a certificate of appealability shall not issue in this matter.

SIGNED this 30th day of August, 2016.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE